

This Agreement, made this day of

1887, by and between JACOB HESS, THEODORE MOSS, DANIEL L. GIBBENS, as Commissioners, under and by virtue of an Act of the Legislature of the State of New York, being chapter 499 of the Laws of 1885, passed June 13, 1885, as amended by chapter 503 of the Laws of 1886, passed May 29, 1886, parties of the first part, and the CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY, a corporation duly organized and existing under and by virtue of the Laws of the State of New York, party of the second part.

WHEREAS, The said parties of the first part are authorized by said act, as amended as aforesaid, to cause to be devised a plan for the placing under ground of all electrical conductors in the City of New York, and to carry the same into operation and effect;

AND WHEREAS, The making of this contract is deemed advisable and proper for the purpose of accomplishing the ends intended and provided for by this act, and the execution of the duties imposed thereby upon the said parties of the first part;

NOW, THEREFORE, this agreement WITNESSETH that in consideration of the premises and of the mutual promises and agreements herein contained, and of the sum of one dollar by each to each of the parties hereto in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

I.—The party of the second part hereby agrees to provide, build, equip, maintain and operate, as herein provided, the subways in this contract mentioned and referred to.

II.—The subways aforesaid shall be built in accordance with the plans and specifications therefor furnished or to be furnished by the parties of the first part, or their successors, and the same shall be provided, built, equipped, maintained, operated and kept in good repair by and at the cost of the party of the second part, who will, upon the reasonable demand of the parties of the first part or of their successors, adopt any and all necessary improvements that will increase the usefulness and efficiency of the system contemplated by this contract and the act above referred to. The parties of the first part and their successors, shall have the right at any time to make such modifications and changes as may be reasonably necessary in the said subways or any of them or the construction, plans, material or any other matter connected with them or any of them, or with the construction, maintenance or operation of them or any of them, and the party of the second part shall conform to and carry out any changes or modifications so made.

III.—The party of the second part shall, at its own cost, furnish to the parties of the first part, and their successors, any and all maps, working and other plans, profiles, surveys and drawings, made to scale or otherwise, and all accessible data, figures and information that may be requested by said parties of the first part, or their successors, and necessary, or deemed to be so, for any purpose relating to or connected with said subways or the duties of the said parties of the first part, or their successors, in connection therewith or relation thereto, and shall also reimburse the parties of the first part, or their successors, for all reasonable expenses incurred by them in superintending and inspecting the construction of said subways.

IV.—The spaces in said subways shall be leased by the party of the second part to any company or corporation having lawful power to operate electrical conductors in any street, avenue or highway in the City of New York

that may apply for the same, including any company or corporation having, or which shall acquire, lawful power to manufacture, use or supply electricity.

No space not actually needed for occupation by its electrical conductors in the due course of its business, shall be leased to any company or corporation to the exclusion or detriment of any other company or corporation needing space in said subways and desiring and able to pay for the same.

The said party of the second part shall, without charge, supply to the City of New York all space in said subway necessary for its electrical conductors and the electrical conductors of each separate department of said city which may now or hereafter be required.

If at any time the space in such subways shall not be sufficient for all the companies or corporations so applying for the same, or for the City of New York or any of its departments, the additional space needed shall be provided by the party of the second part, at its own cost, by the construction, maintenance, equipment and operation of additional subways sufficient therefor, subject, however, to the same conditions and the same control by the parties of the first part, or their successors, as the original subways are by the terms of this contract and by any law.

V.—The party of the second part may fix a fair scale of rents to be charged according to the kind of conductors and the amount of space required therefor, which shall be at the same rate to all occupants making a like use of said subways, but the scale of rentals or any charges fixed or made by the party of the second part shall at all times be subject to the control, modification and revision of the parties of the first part, or their successors; and no contract shall be made between the party of the second part and any company or corporation on any terms which shall not require the payment by such other company or corporation of rents at the rates so fixed.

VI.—Whenever the net annual profits of the party of the second part, remaining after the payment of the expenses of maintaining and operating such subways, shall exceed ten per cent. upon the actual cash capital invested by it in providing, constructing and equipping such subways, then the excess of such profit over the ten per cent. shall be paid into the Treasury of the City of New York; but if in any year or years prior to the earning of such excess, the earnings of the party of the second part shall not have equaled ten per cent., then the party of the second part shall be first entitled to recoup itself out of such excess for the difference between the actual annual earnings and the said ten per cent., the intention hereof being that no payment shall be made to the City of New York out of such excess of earnings until the party of the second part shall first have actually earned and received ten per cent. for each year theretofore. And the party of the second part shall and will at all times keep just, full and true books of account which shall show in detail the transactions had by it, and with whom the same were had, and the nature thereof, and especially

1. The amount of space in said subways occupied, with the names of the occupants thereof and the respective amounts of such space occupied by each occupant.

2. The number and kind of electrical conductors therein, with the names of the owners or users thereof.

3. The gross and net amount in detail of rentals and charges and moneys of all kinds collected or received by the party of the second part, and from whom and for what the same were received or collected, specifying the names of those paying such moneys, and the cause or consideration of such payments in detail.

4. All payments of every kind made by the party of the second part, specifying in detail and separately each

payment and to whom the same was made and the cause or consideration thereof, so as to show specifically the nature thereof, so that it may be determined whether the same is chargeable to the cost of construction or of maintenance.

And said books and accounts, and all the books, accounts, papers and writings of the party of the second part shall at all times be open to the inspection of the parties of the first part, or their successors, and of the Comptroller of said city, or any person or persons by him or them deputed to examine the same, and they or he may copy the whole or any part thereof.

And said party of the second part shall and will on the *first* day of *October* of each year make and return a statement to the Comptroller of the City of New York, in such form and verified as he may require and prescribe for the year ending the next preceding *first* day of *September*. And any moneys payable to the city under this clause of this agreement, by the party of the second part, shall be paid annually on the *first* day of *November*.

VII.—The party of the second part shall not open any street surface without first obtaining a permit therefor from the Commissioner of Public Works, or other officer or department of said city vested by law with the control of the surface of the street to be opened, and giving to him or it such an agreement as he or it may approve and require for the proper restoration of the pavement of said street and the surface thereof, and for keeping the same in repair for one year after the same has been so replaced or restored.

VIII.—The party of the second part shall not be deemed to be the servant or agent of the parties of the first part, or their successors, or of the Mayor, Aldermen, and Commonalty of the City of New York in doing any act under or in execution or performance of this contract, but shall be deemed to be, and is hereby intended to be

made and dealt with by the parties of the first part and their successors, and all persons whomsoever as an independent party contracting with the parties of the first part, and their successors and others, and having and acquiring such rights for itself as this contract secures to it.

IX.—All companies occupying space in said subways shall own their own conductors and shall have the full management and control thereof, except where otherwise mutually agreed upon between the said party of the second part and said companies, subject to the approval of the parties of the first part or their successors; but said management and control shall be subject to the rights of all other occupants of said subways and to such reasonable rules and regulations as may be made by the said party of the second part. All maintenance and repairs of such conductors shall be done by the company owning them, under the supervision of the party of the second part, who shall prevent injury to the conductors of other occupants.

X.—In case any dispute shall arise between the party of the second part and any company occupying or desiring or required to occupy said subways, the same shall be referred to the parties of the first part, or their successors, for settlement, whose decision shall be final.

XI.—The party of the second part shall give a bond to the parties of the first part, and their successors, in the penal sum of two hundred and fifty thousand dollars, with good and sufficient sureties satisfactory to the parties of the first part, or their successors, securing the just and full performance of this contract, and the building or providing of said subways as herein provided and securing said parties of the first part and their successors, and the Mayor, Aldermen and Commonalty of said city, well and safely against any and all patent and other suits arising from the building and operation, use and maintenance of said subways or of any subways provided by the party of

the second part, whether the same now are or shall hereafter be built by it, and in the case of the insolvency or death of either of the sureties upon such bond, the party of the second part will, upon the request of the parties of the first part, or their successors, give a new bond of the same tenor and effect, and subject to approval, the same as the bond so originally to be given. The said bond shall also contain a guarantee to the City of New York for any and all damage to said city by reason of the construction of said subways. Any and all provisions contained in the subdivision or clause marked IX. of the agreement between Roswell P. Flower, Jacob Hess and Theodore Moss, as Commissioners, under the acts aforesaid, and dated the 27th day of July, 1886, and not in this agreement contained, are hereby revoked and canceled.

XII.—If at any time, in the opinion of the parties of the first part or their successors, there shall be a substantial failure by the party of the second part to fully carry out the provisions of the said agreement dated the 27th day of July, 1886, as amended and modified by this agreement, and it is so adjudged by competent judicial authority, the Mayor, Aldermen and Commonalty of the City of New York may enter into the possession of said subways, and the party of the second part shall, subject to any valid mortgages or liens then thereon outstanding, not exceeding fifty per cent. on the actual cost of such subways, and all leases or contracts then existing for the use thereof as hereinbefore provided, forfeit its interest in such subways, and will quietly and peaceably surrender the possession thereof to the Mayor, Aldermen and Commonalty of the City of New York, who shall thereupon and thereafter hold and own the same, subject, however, to the same powers and duties of the parties of the first part, or their successors, as the same would otherwise have been held subject to by the party of the second part, and the same, until otherwise provided by law, shall be maintained and operated by the said Mayor, Aldermen and

Commonalty of the City of New York by and through the parties of the first part, or their successors, subject to such lawful liens, mortgages, leases and contracts.

XIII.—The parties of the first part hereby grant to the party of the second part the right to build subways in accordance with such plans and specifications as shall at any time be furnished by the parties of the first part, as hereinbefore provided, and said parties of the first part hereby agree to use all lawful means within their power to compel all authorized companies or persons using electrical conductors to comply with the provisions of law and to place their conductors in said subways and to pay a fair rental for the space occupied therein, but neither the parties of the first part nor their successors, nor the Mayor, Aldermen and Commonalty of the City of New York, shall be liable or responsible for any neglect or failure on the part of any such company or person so to place their conductors in said subways, or having placed their conductors therein, to pay the fair rental for the space occupied by him or it; nor shall the Mayor, Aldermen and Commonalty of the City of New York be liable for any neglect, failure or refusal in the premises of the parties of the first part, or their successors.

XIV.—The successors of the parties of the first part shall be construed to include those who may succeed them as Commissioners under the provisions of existing laws, or under the provisions of any law hereafter passed by the Legislature of the State of New York, or any officer or officers of the City of New York who shall succeed to the powers and duties of the parties of the first part, or any part of such powers and duties, under the provisions of any law now existing or hereafter enacted by the said Legislature, or any other persons or officers hereafter appointed or selected pursuant to any law, to succeed to the powers and duties, or any part thereof, of said parties of the first part.

XV.—The said party of the second part shall, at any time after January 1st (1897), eighteen hundred and ninety-seven, upon the demand of the Commissioners of the Sinking Fund in the City of New York, by proper instrument or instruments of conveyance or transfer, in due form and duly executed, sell, assign, transfer, convey and set over to the Mayor, Aldermen and Commonalty of said city all or any of the subways constructed by it, as aforesaid, and all or any of the contracts or other property of any kind held or owned by the party of the second part for any of the purposes of its incorporation, subject, however, to all leases, mortgages or contracts theretofore lawfully made, within the limitations imposed by section XII. of this contract, when the said Commissioners of the Sinking Fund shall request them to and for the payment for which the said Commissioners of the Sinking Fund shall provide, as provided by any law hereafter passed, but not less than the cost thereof; and if the said company shall not have earned ten per cent. per annum on actual cost during the term of this contract a further payment shall be made, in addition to the cost, not exceeding ten per cent. on such cost, to the extent of such deficiency in annual earnings.

XVI.—This agreement shall not bind either of the parties thereto, except and until it shall have been ratified and confirmed by any Act or Acts of the Legislature of the State of New York, and shall be null, void and of no effect unless and until the bond hereinbefore mentioned and required to be given by the party of the second part shall be given within thirty days after such act shall have been passed, or within such further time, not to exceed sixty days additional, as may be granted for that purpose within said thirty days by said parties of the first part or their successors.

And from and after the time when this contract shall become binding upon the parties thereto, it shall be deemed and construed to be a contract amending and modifying the agreement made by and between the Commissioners of

Electrical Subways in the City of New York and the party of the second part hereto, dated the 27th day of July, 1886, and nothing in this contract nor in the contract hereby amended and modified shall be construed as granting to the party of the second part any exclusive privilege, immunity or franchise whatsoever.

XVII.—This contract shall be executed in triplicate, one copy thereof to be kept and retained by each of the parties hereto, and the third copy thereof to be deposited and filed in the office of the Comptroller of the City of New York, and to be a public record.



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